A CORPORATION AS A CITIZEN IN CONNECTION WITH THE JURISDICTION OF THE UNITED STATES COURTS.

IT IS to be noted that the subject treated in this paper is the citizenship of corporations in connection with the jurisdiction of the courts of the United States and for no other purpose. In the Supreme Court of the United States is to be found a large number of cases treating directly, or indirectly, this question, but it is deemed expedient to select only the original authorities in their chronological sequence, the pathfinders, as it were, in this once virgin legal wilderness and from the facts and doctrines there expounded attempt to determine the growth and limits of the status of corporate citizenship.

The first case of importance to be found dealing with this subject is that of the Bank of United States *v.* Deveaux,[1] decided in 1809. The cause of action was as follows:

In 1805 the Georgia legislature passed a law imposing a tax upon the branch of the Bank of the United States located at Savannah. The bank refusing to pay the tax, the State revenue officers entered its building and forcibly carried away two boxes of silver bullion to the value of $2,004, for which the bank brought its action of trespass in the United States Circuit Court for the District of Georgia.

The plaintiffs in the original declarations, the president, directors and company of the Bank of the United States, alleged themselves to be citizens of the State of Pennsylvania and the defendants to be citizens of the State of Georgia. And the defendants "come and defend the force and injury, when, etc., and pray judgment of the declaration aforesaid, because they say that the circuit court of the United States ought not to have and entertain jurisdiction of the said declaration and the matters therein contained, for that the said president, directors and company of the Bank of the United States aver themselves to be a

[1] 5 Cranch 61.

body politic and corporate and that, in that capacity these defendants say they cannot sue or be sued, plead or be impleaded in this honorable court, by anything contained in the Constitution or laws of the same United States and this they are ready to verify; wherefore, for want of jurisdiction in this behalf they pray judgment and their costs, etc." To this plea in abatement there was a demurrer and joinder and a decision by the lower court in favor of the defendant.

On appeal by the bank to the United States Supreme Court this judgment was reversed, the plea in abatement of jurisdiction overruled, and the cause remanded. The Supreme Court, following the able argument of Mr. Binney for the plaintiff in error, took this anomalous position; that, although a corporation was not a citizen within the meaning of the judiciary act (conferring upon the federal courts jurisdiction of controversies between citizens of different States), yet the court would look behind the corporation, the mere legal entity, to discover the residence of the individuals composing the corporation. And that, if the requisite difference in citizenship obtained as to the members of the corporation, they might sue jointly in the federal courts in the corporate name as a matter of comity. The court laid great stress upon the English case of the Mayor and Commonalty *v.* Wood,[2] where suit was brought by the corporation of London and the lower court held to be deprived of jurisdiction of the cause by the court of King's Bench, because of the character of the individuals who composed the corporation, the court expressly declaring its authority to look behind the corporate name at the individual.

The language of the Supreme Court is in part as follows:

> "That invisible, intangible and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and consequently cannot sue or be sued in the courts of the United States unless the rights of the members in this respect can be exercised in their corporate name. * * * That name (i. e., the corporate name) indeed, cannot be an alien or a citizen, but the persons whom it represents may be the one or the other; and the controversy is, in fact

[2] 12 Mod. 669.

> and in law, between those persons suing in their corporate character, by their corporate name, for a corporate right, and the individual against whom the suit may be instituted. Substantially and essentially, the parties in such a case, where the members (note the word) of the corporation are aliens, or citizens of a different State from the opposite party, came within the spirit and terms of the jurisdiction conferred by the constitution on the national tribunals. * * * The court feels itself authorized * * * on a question of jurisdiction to look to the character of the individuals who compose the corporation."

This then is the conclusion reached by the reasoning of the court; (1) that a corporation is not and cannot be itself a citizen; and (2) if there obtains among the members who compose the corporation the proper citizenship, then their citizenship inheres in the corporate body and effects federal jurisdiction. But, it is respectfully submitted, with all deference to the great jurist who presided at that time over the court and who framed this opinion, that the members who compose a corporation are not merely the president and directors (the parties to this suit), but all of the shareholders in the company. Therefore, under the doctrine laid down by the same court only three years previously in the eminent case of Strawbridge *v.* Curtis,[3] namely, that each of the plaintiffs must be capable of suing each of the defendants in the federal courts, in order to support an action there on the ground of diverse citizenship, the court's conclusion was erroneous and unsupported by its English authority,[4] unless each and every stockholder of the Bank of the United States, of which there were hundreds, was a citizen of a different State than was each of the defendants; a fact which does not affirmatively appear in the official report of the case.

Let us now examine the case of the Commercial and Railroad Bank of Vicksburg *v.* Slocomb, Richards & Co.,[5] decided in 1840. The facts in this case were briefly these: Three persons, named in the declaration and styling themselves citizens of Louisiana and trading under the firm name of Slocomb, Richards

[3] 3 Cranch 267.
[4] Mayor & Commonalty *v.* Wood, *supra.*
[5] 14 Peters (U. S.) 60.

& Co., brought suit upon a certificate of deposit for $3,500, in the United States Circuit Court of the Southern District of Mississippi, against the president, directors and company of the Bank of Vicksburg, styling them as citizens of the State of Mississippi, being a banking company incorporated by the legislature of that State and doing business in the southern district thereof. To the declaration, averring as stated, the defendants plead in abatement to the jurisdiction of the court, as follows: to wit, that they were a corporation aggregate incorporated as averred in plaintiff's declaration, but that two of the corporators or stockholders were and always had been citizens of the State of Louisiana. To this plea of the defendant bank, the plaintiffs demurred and the circuit court sustained the same and rendered judgment for plaintiffs as prayed in the declaration.

The case was then taken by the defendant upon writ of error to the Supreme Court of the United States, where the judgment of the lower court was promptly reversed, the court holding that the United States circuit court was without jurisdiction of the cause. It was contended by the defendants in error that the jurisdiction of the lower court was established and justified under the Act of February 28th, 1839, amending the federal judicial system and § 1 of which provided:

> "That where in any suit at law or in equity commenced in any court of the United States there shall be several defendants any one or more of whom shall not be inhabitants of or found within the district where the suit is brought, or shall not voluntarily appear thereto, it shall be lawful for the court to entertain jurisdiction and proceed to the trial and adjudication of such suit between the parties who may be properly before it, etc."

But the court held that this act was simply meant to eliminate the difficulties arising under § 11 of the Judiciary Act of 1789 where, as is so often the case, rules of substantial law require jointure as parties persons only indirectly interested and non-residents of the district of forum. This 11th section provided:

> "That no civil suit shall be brought before either of said courts against an inhabitant of the United States by any original process, in any district than that whereof he is an

inhabitant or in which he may be found at the time of serving the writ."

The court went on to say that:

"The Act of 1839 was intended to remove these difficulties, by providing that the persons not being inhabitants, or not found within the district, may either not be joined at all with those who were, or if joined, and they did not waive their personal exemption, by a voluntary appearance, the court may go on to judgment, or decree against the parties properly before it, as if the others had not been joined.

"But it did not contemplate a change in the jurisdiction of the courts, as it regards the character of the parties, as prescribed by the Judiciary Act, and as expounded by this court; that is, that each of the plaintiffs must be capable of suing, and each of the defendants capable of being sued; which is not the case in this suit; some of the defendants being citizens of the same State with the plaintiffs."

The able reasoning of the court, applying the doctrine of Strawbridge *v.* Curtis and pursuing to its logical conclusion the reasoning of Chief Justice Marshall as contained in the Bank *v.* Deveaux,[6] can be no better expounded than by quoting from the perspicuous opinion recorded by Mr. Justice Barbour, as follows:

"It will be observed that the plaintiffs were citizens of Louisiana; so averred to be in the declaration, and two of the members of the corporation sued were also citizens of Louisiana. They are so averred to be in the plea and the demurrer admits the truth of this averment. The 11th section of the Judiciary Act of 1789 gives to the circuit courts of the United States jurisdiction in cases where 'the suit is between a citizen of the State where the suit is brought and a citizen of another State.' This court was called upon at an early period to construe this section of the Judiciary Act in relation to the very question raised by the pleadings in this case.

"In the case of Strawbridge *et al. v.* Curtis *et al.*, 3 Cranch 267, they decided that where there are two or more joint plaintiffs and two or more joint defendants, each of the plaintiffs must be capable of suing each of the defendants in the courts of the United States, in order to support the

[6] *Supra.*

> jurisdiction. And what is more particularly applicable to this case, in the case of the Bank of the United States *v.* Deveaux *et al.*, 5 Cranch 61, this court decided that a corporation aggregate composed of citizens of one State might sue a citizen of another State in the circuit courts of the United States; that is, they in effect decided that, although the artificial being, a corporation aggregate, was not a citizen, as such, and therefore could not sue in the courts of the United States, as such, yet the court would look beyond the mere corporate character, to the individuals of whom it was composed; and if they were citizens of a different State from the party sued, they were competent to sue in the courts of the United States. But, still upon the principle of Strawbridge *v.* Curtis, all the corporators must be citizens of a different State from the party sued. * * * It is perfectly clear that the same principles apply to the individuals composing a corporation aggregate, when standing in the attitude of defendants, which does when they are in that of plaintiffs. The applications of these doctrines to this case would seem to be decisive of its fate * * * so that some of the defendants being citizens of the same State with the plaintiffs, it follows that although each of the plaintiffs was capable of suing, yet each of the defendants was not capable of being sued in the circuit court of Mississippi."

Thus it is seen that the case of the Bank of Vicksburg *v.* Slocomb, decided thirty-one years later, firmly establishes the doctrine laid down in the Bank *v.* Deveaux, that although a corporation aggregate was not *per se* a citizen, yet the court would look behind the mere corporate entity and regard the citizenship of its corporators. And the later case in its application of this doctrine, hews straight to the line and actually looks to the citizenship of all of the members (i. e., the stockholders) of the corporation, in determining its citizenship. Such, then, may be the true conception of the corporate status in the year 1840.

This state of the law, so laboriously arrived at, enjoyed but a brief existence. Four years after the preceding opinion was handed down, the case of the Louisville, Cincinnati & Charleston Railroad Co. *v.* Letson[7] was decided by the Supreme Court

[7] 2 How. (U. S.) 497.

of the United States. In 1844 this law-making case completely changed the status of corporations for purposes of jurisdiction of the federal courts—overthrowing the Bank *v.* Deveaux and the Bank *v.* Slocomb and even reviewing and controlling Strawbridge *v.* Curtis. The facts productive of such drastic effects were briefly these: One Letson, a citizen of New York, brought an action of covenant against the railroad company in the circuit court of the United States for the district of South Carolina. The defendant filed a plea to the jurisdiction, alleging that the railroad company was "not a corporation whose members are citizens of South Carolina, but that some of the members of the said corporation are citizens of South Carolina and some of them, namely, John Rutherford and Charles Baring, are and were at the time of commencing the said action citizens of North Carolina;" and also alleging that the Bank of Charleston, South Carolina, was also a member of the corporation railroad and that several stockholders in the bank were citizens of the State of New York; also other allegations to like effect. To this plea in abatement there was a general demurrer which was sustained by the court and the case then going on for trial, the jury found for the plaintiff Letson in the sum of $18,000 and over. Upon writ of error from the Supreme Court to the circuit court to review the opinion on demurrer, the decision of the lower court was affirmed. The Supreme Court, speaking through Mr. Justice Wayne, endeavors at some length to justify its conclusions, with what success the reader must judge. It will be seen that the court calls attention to the fact that the earlier cases were all given reluctantly, and some without benefit of argument by counsel, and subsequently regretted by the court rendering them. It then proceeds to discuss the Judiciary Act of February 28, 1839, and enlarges its scope beyond the limits set in the Bank *v.* Slocomb; then, apparently gaining courage with the heat of the conflict and the sound of its own convincing voice, the court, through Mr. Justice Wayne, steps boldly forth and declares that "a corporation created by and doing business in a particular State is to be deemed to all intents and purposes as a person, although an artificial person, an inhabitant of the same State, for the purposes of its incorporation capable

of being treated as a citizen of that State, as much as a natural person." The importance of this case justifies the insertion of the following excerpts from the opinion of the court and comments thereon:

"After mature deliberation we feel free to say that the cases of Strawbridge *v.* Curtis and that of the Bank *v.* Deveaux were carried too far and that consequences and inferences have been argumentatively drawn from the reasoning employed in the latter which ought not to be followed. * * * The case of the Commercial Bank of Vicksburg *v.* Slocomb was most reluctantly decided upon the mere authority of those cases. We do not think either of them maintainable upon the true principles of interpretation of the Constitution and laws of the United States. A corporation created by a State to perform its functions under the authority of that State, and only suable there, though it may have members out of the State seems to us to be a person, though an artificial one, inhabiting and belonging to that State and therefore, entitled for the purpose of suing and being sued, to be deemed a citizen of that State. We remark too that the cases of Strawbridge *v.* Curtis and the Bank *v.* Deveaux have never been satisfactory to the bar and that they were not, especially the last, entirely satisfactory to the court that made them. They have been followed always most reluctantly and with dissatisfaction. By no one was the correctness of them more questioned than by the late Chief Justice John Marshall who gave them. * * * We are now called upon, upon the authority of those cases alone, to go farther than has yet been done. * * * We cannot follow further and upon our maturest deliberation we do not think that the cases relied upon for a doctrine contrary to that which this court will here announce are sustained by a sound and comprehensive course of professional reasoning. * * * Our conclusion too if it shall not have universal acquiescence, will be admitted by all to be coincident with the policy of the Constitution and the condition of our country. It is coincident also with the recent legislation of Congress, as that is shown by the Act of the 28th of February, 1839, in amendment of the acts respecting the judicial system of the United States. We do not hesitate to say that it was passed exclusively with an intent to rid the courts of the decision in the case of Strawbridge *v.* Curtis."

At this point let it be stated again that the act referred to by the court in effect provided that in any suit brought in the federal courts wherein there should be several defendants, any one or more of whom shall not appear or be found within the district where the suit was brought, the court may proceed to adjudicate the cause between such parties as were before it, the judgment not to conclude parties not appearing or properly served. In the preceding case, it will be remembered, the court decided that this act did not change the actual jurisdiction of the courts, as prescribed by § 11, of the Judiciary Act of 1789 (declaring that suit may only be brought in the district of residence of the defendant or in which he may be found at time of serving the writ), but only remedied difficulties in practice arising from the necessity of enjoining parties only indirectly interested. In this case of the Railroad *v.* Letson, however, the court went further and held that the act applied to corporations as well as actual beings and established the jurisdiction of the circuit court over the cause under review. Continuing, the court said:

> "The case before us might be safely put upon the foregoing reasoning and upon the statute. * * * But there is a broader ground upon which we desire to be understood, upon which we altogether rest our present judgment, although it might be maintained upon the narrower ground already suggested. It is that a corporation created by and doing business in a particular State is to be deemed to all intents and purposes as a person, although an artificial person, and inhabitant of the same State, for the purposes of its incorporation capable of being treated as a citizen of that State as much as a natural person. * * * It is substantially within the meaning of the law a citizen of the State which created it and where its business is done, for all the purposes of suing and being sued. * * * When the corporation exercises its powers in the State which chartered it, that is its residence and such an averment is sufficient to give the circuit courts jurisdiction."

So, in the year 1844, we find the Supreme Court, a little dubiously it is true, yet unequivocally establishing the rule that a corporation is a citizen of its charter State, capable of entering the federal courts as such. In fact, it seems to the writer

that the court went slightly out of its way to promulgate this doctrine; an interesting fact when viewed in the light of an indication of the contemporaneous unpopularity of the previous state of the law on this subject.

The final development of this theory as to corporate citizenship was reached in 1853. In that year the United States Supreme Court decided the important and highly interesting case of Alexander J. Marshall *v.* the Baltimore and Ohio Railroad Co.[8] In this case the court, though divided on the question, renounced the doctrine of the Railroad Co. *v.* Letson and maintained that though a corporation is not itself a citizen of its charter State, yet the court will presume that every one of its incorporators is a citizen of that State; a corporation being admitted into the federal courts upon the ground of the estoppel of each of its members to deny that they are any of them citizens of other than the State of incorporation. "The presumption arising from the habitat of a corporation in the place of its creation being conclusive as to the residence or citizenship of those who use the corporate name and exercise the faculties conferred by it. * * *" A distinction, it may be said, with no great difference.

The facts out of which this case arose, are briefly as follows:

On the seventeenth of November, 1846, a letter, couched in elegant and convincing language, was written by one A. J. Marshall, of Warrenton, Va., to Mr. McLane, the then president of the Baltimore and Ohio Railroad Company. Mr. Marshall naively confides that he is the possessor of "considerable experience as a lobby-member before the legislature of Virginia" and goes on to say "and I think understand the character and component material of that honorable body." The honorable gentleman then concludes his epistle with the proposition that for the modest sum of $50,000 he would lobby through "that honorable body" of Virginia legislators whose "character and component material" he understood so well, a bill granting to the B. & O. Railroad a much desired right of way through Virginia. I wish that I could insert *in extenso* the letter of this enterpris-

[8] 16 How. (U. S.) 314.

ing ante-bellum lobbyist, who must have been the Judge Andrew Hamilton or Col. Mulhall of his day; but the limits of this paper forbid. Suffice it to say that it is written with the grace and cogency of a justice of that court in whose records it is found.

This proposition of Marshall was accepted and he and his cohorts set to work upon the Virginia legislature, "eminently kind and social in their intercourse" and from whose "kind and social dispositions" he was to wheedle and bribe the B. & O.'s right of way. It is to the everlasting glory of the old commonwealth that I am able to record that Mr. Marshall and his blood-money failed ignominously. But some kind of a bill whereby the city of Wheeling, Virginia, was greatly benefited, was passed over the desperate resistance of Marshall and this bill, subsequently modified, enabled the railroad to run its line through Virginia and so connect with the Ohio river and Cincinnati. Then Marshall claimed that he had earned his reward, or at least a large portion of it and he brought suit against the Baltimore and Ohio Railroad in the United States Circuit Court for the District of Maryland, for $50,000. Here the decision went for the defendant and upon writ of error from the Supreme Court of the United States this decision was affirmed. Here the plaintiff in error objected to the jurisdiction of the federal courts, but in its opinion by Mr. Justice Grier, excerpts from which follow, the court took occasion to affirm the Bank *v.* Deveaux and the Railroad *v.* Letson in their main conclusions, although it established new means of reaching those conclusions. The court said:

> "'A corporation, it is said, is an artificial person, a mere legal entity, invisible and intangible.' This is no doubt metaphysically true in a certain sense. The inference also that such an artificial entity 'cannot be a citizen' is a logical conclusion from the premise, which cannot be denied. But a citizen who has made a contract and has a controversy with a corporation may also say with equal truth that he did not deal with a mere metaphysical abstraction, but with natural persons; that his writ has not been served on an imaginary entity, but on men and citizens; and that his contract was made with them as the legal representatives of numerous unknown associations, or secret and dormant partners. * * *

> "The persons who act under these faculties and use this corporate name may be justly presumed to be resident in the State which is the necessary habitat of the corporation, and where alone they can be made subject to suit; and should be estopped in equity from averring a different domicil as against those who are compelled to seek them there, and can find them there and nowhere else." [9]

This, then appears to be the final word upon this question of the citizenship of corporations as affecting their status in courts of the United States.[10]

In a hurried review of the situation, we have seen the highest court of the land: 1. In Strawbridge *v.* Curtis, laying down the rule which subsequently gave rise to a series of cases establishing in different manners, and with various results, the standing in the federal courts of corporate litigants. In this case it was declared that in order to sue in the federal courts on the ground of diverse citizenship, the requisite citizenship must apply to each party on both sides; i. e., each plaintiff must be capable of suing each defendant in a court of the United States.

2. In the Bank *v.* Deveaux it was decided that the court regarded the citizenship of the members of the corporation, rather than the legal entity itself; but in the application of this doctrine the court seemed to consider only the directors of the corporation.

3. In the Bank *v.* Slocomb the rules in the two preceding cases were affirmed and here the court avoids the seeming error manifested in Deveaux's case, and looks to the citizenship, not only of the directors, but of all the stockholders, i. e., the members of the corporation.

4. In the Railroad *v.* Letson it was mantained that a corporation itself was a citizen of its charter State.

5. Finally in the case of Marshall *v.* the Railroad the court established the rule that a corporation was itself no citizen, but

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[9] For a Kentucky construction of this case, see Com. *v.* Milton, vol. 12 B. Monroe, pp. 227-8.

[10] See Parker Washington Co. *v.* Cramer, 201 Fed. 878; Shaw *v.* Princey Mining Co., 145 U. S. 444, 451; St. Louis & San Francisco R. R. Co. *v.* James, 161 U. S. 545; Barrow's Steamship Co. *v.* Kane, 170 U. S. 100; Thomas *v.* Board of Trustees Ohio St. University, 195 U. S. 207; Doctor *v.* Harrington, 196 U. S. 579.

that the same result is obtained by applying to all members thereof an equitable estoppel to deny their citizenship in the State of incorporation.

This last conclusion, then, we must adopt as the present view of the courts regarding this much vexed question, the status of corporations as citizens of the United States.

Wm. Overton Harris.

LOUISVILLE, KY.